

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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PROMEGA CORPORATION,

Plaintiff,

Case No. 01-C-0244-C

vs.

APPLERA CORPORATION; AND LIFECODES  
CORPORATION, AND ITS SUBSIDIARIES  
CELLMARK DIAGNOSTICS, INC. AND  
GENOMICS INTERNATIONAL  
CORPORATION,

Defendants.

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**DECLARATION OF PAT W. COSTELLO IN SUPPORT OF REPLY TO APPLERA'S  
MOTION FOR SUMMARY JUDGMENT OF INVALIDITY AND  
UNENFORCEABILITY OF U.S. PATENT NOS. 5,843,660 AND 6,221,598**

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I, Pat W. Costello, declare as follows:

1. I submit this declaration in support of Reply to Applera's Motion for Summary Judgment of Invalidity and Unenforceability of U.S. Patent Nos. 5,843,660 and 6,221,598. If called upon as a witness, I could competently testify to the truth of each of the statements herein.

2. Attached hereto as Exhibit A is a true and correct copy of Promega's Post-Trial Brief In Support Of Inequitable Conduct, in Civil Case No. C-93-1748-VRW, found at <<http://www.promega.com/taqlegal/990201p/p990331d.pdf>>.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the condensed deposition transcript of Harris Zimmerman, taken on April 1, 1993 in the Applied Materials, Inc. vs. Advanced Semiconductor Materials America, Inc. et al. case, Case No. C-91 20061 RMW in the United States District Court Northern District of California.

Executed September 9, 2002 at Redwood Shores, California.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

  
PAT W. COSTELLO